

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

NATHAN MAKER and
KIMBERLY MAKER,
Plaintiffs,

vs.

M/V FLING, her engines, tackle, equipment,
appurtenances, etc., *in rem*; TEXAS
CARIBBEAN CHARTERS LLC, RINN
BOATS INC., FLING CHARTERS INC.,
MICHAEL BARANOWSKI, JOHN
WINDEMILLER, and TOMMY
PHILLIPS, *in personam*,
Defendants.

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C.A. NO. 3:26-CV-00118

[JURY]

PLAINTIFFS' VERIFIED FIRST AMENDED COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT/MAGISTRATE JUDGE:

In accordance with FED. R. CIV. P. 15(a), Plaintiffs Nathan Maker and Kim Maker (hereinafter “Plaintiffs”) file this Verified First Amended Complaint against Texas Caribbean Charters LLC, Rinn Boats Inc., Fling Charters Inc., Michael Baranowski, John Windemiller, and Tommy Phillips, *in personam*; and against the *M/V FLING*, her engines, tackle, equipment, and appurtenances, *in rem*, prior to any answer or responsive pleadings in this matter, seeking relief under the general maritime law for physical and mental injuries and damages caused by the negligence of said vessel, her officers, and crew, as well as the negligent acts and omissions of the dive masters onboard, arising out of an offshore passenger voyage and dive excursion in the Gulf of Mexico, including, without limitation, Defendants’ failures in diver tracking, separation response, and rescue efforts before, during, and after dive operations, and substitute . Accordingly, Plaintiffs would respectfully show unto this Honorable Court as follows:

I.
JURISDICTION AND VENUE

1.01 This action includes claims within this Court’s admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333, as well as claims brought “at law” pursuant to the “savings to suitors” clause set forth in 28 U.S.C. § 1333(1) under the Court’s diversity jurisdiction.¹ Plaintiffs seek relief under the general maritime law of the United States.

1.02 This Honorable Court has jurisdiction over Defendants Texas Caribbean Charters LLC, Rinn Boats Inc., Fling Charters Inc., Michael Baranowski, John Windemiller, and Tommy Phillips, *in personam*, based upon diversity of citizenship, pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000.00USD, and Plaintiffs and the *in personam* Defendants are diverse in citizenship.

1.03 This Honorable Court has jurisdiction over Defendant *M/V FLING*, *in rem*, pursuant to 28 U.S.C. § 1333, and Supplemental Admiralty Rule C. A warrant for the arrest of the M/V FLING has been issued and executed, and the Vessel was arrested within this District. The Vessel was thereafter released upon the posting of substitute security in the form of a Letter of Undertaking, which stands in place of the res for purposes of this action. This Court therefore retains in rem jurisdiction over the Vessel.

1.04 Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiffs’ claims occurred on navigable waters off the coast of Texas, within this District, during an offshore passenger voyage and dive excursion conducted from the M/V FLING, which departed from Freeport, Texas, transported passengers to offshore locations in the Gulf of Mexico, and was scheduled to return to Freeport, Texas. Venue is also

¹ Plaintiffs do not designate this entire action as admiralty under Rule 9(h) and expressly preserve their right to a trial by jury. *See Luera v. M/V Alberta*, 635 F.3d 181 (5th Cir. 2011).

proper pursuant to § 1391(b)(1) because Defendants Texas Caribbean Charters LLC, Rinn Boats Inc., and Fling Charters Inc. are principally located in this District, and Defendant Baranowski resides in this District. Additionally, venue is proper in this District pursuant to Supplemental Rule C, because the *M/V FLING* was arrested within this District and substitute security has been posted in place of the res.

II. PARTIES

2.01 Plaintiffs Nathan Maker and Kim Maker are and were at all relevant times herein, a married couple who reside in Oklahoma.

2.02 Defendant *M/V FLING* (Official Number: 559573, Hull Number: H-74-8-009; Call Sign: WDA7435) her engines, tackle, equipment, and appurtenances (hereinafter sometimes “the Vessel”) is an inspected passenger vessel engaged in offshore passenger voyages, including diving excursions and other maritime operations, in the navigable waters of the United States, including the Texas Gulf Coast. The Vessel is, therefore, subject to suit *in rem*, and is liable for the negligent acts and omissions of her owners, operators, master, and crew.

2.03 Upon information and belief, Defendant Texas Caribbean Charters, LLC d/b/a Texas Caribbean Charters (hereinafter “TCC”) is and was at all times relevant herein a registered Texas entity with its principal place of business in Freeport, Texas, that reportedly owns, operates, manages and/or charters the *M/V FLING*. Upon information and belief, TCC is governed and/or managed by Texas Caribbean Trust, whose registered address is: 16055 Space Center Blvd., Suite 190, Houston, Texas 77062. TCC has substantial and/or continuous and systematic contacts with the State of Texas and is subject to this Court’s jurisdiction. TCC may be served with process by and through its registered agent: Andrew A. Lewis, Lewis & Lewis, Attorneys at Law, PLLC, at 16055 Space Center Blvd, Suite 190, Houston, Texas 77062.

2.04 Upon information and belief, Defendant Rinn Boats, Inc. (hereinafter “Rinn”) is and was at all times relevant herein a Texas corporation with its principal place of business in Houston, Texas, and the reported owner and/or operator of the *M/V FLING*. Upon information and belief, Rinn maintains its principal place of business is located at: 6519 Preston Trail, Houston, Texas 77069, has substantial and/or continuous and systematic contacts with the State of Texas, and is subject to this Court’s jurisdiction. Rinn may be served with process by and through its President, Director, and registered agent: Roland Rinn, 6519 Preston Trail, Houston, Texas 77069.

2.05 Upon information and belief, Defendant Fling Charters, Inc. (hereinafter “Fling”) is and was at all times relevant herein a Texas corporation with its principal place of business in Brazoria, Texas, and the reported owner, operator and/or charterer of the *M/V FLING*. Upon information and belief, Fling maintains its principal place of business is located at: 4166 CR 461A, Brazoria, Texas 77442, has substantial and/or continuous and systematic contacts with the State of Texas, and is subject to this Court’s jurisdiction. Fling may be served with process by and through its President and registered agent: Kenneth Bush, 203 North Ave. J, Freeport, Texas 77541.

2.06 Upon information and belief, Defendant Michael Baranowski (“Baranowski”) individually is, and at all material times was, a resident of the State of Texas, a member of the Professional Association of Diving Instructors (hereinafter “PADI”), PADI Dive Master, PADI Master Scuba Diver Trainer, and a Captain of the *M/V FLING* during the subject voyage and incident dive. Upon further information and belief, Defendant Baranowski may be served with process at: 606 E 2nd St. Sweeny, TX 77480-3138, or wherever he may be found.

2.07 Upon information and belief, Defendant John Windemiller (“Windemiller”) individually is, and at all material times was, a resident of the State of Texas, a member of the

Professional Association of Diving Instructors (hereinafter “PADI”), PADI Dive Master, PADI Master Scuba Diver Trainer, and was a person in charge of the subject voyage and the dives conducted thereon. Upon further information and belief, Defendant Windemiller may be served with process at: 804 Carriage Ln Nederland, Texas 77627-2346, or wherever he may be found.

2.08 Upon information and belief, Defendant Tommy Phillips (“Phillips”) individually is, and at all material times was, a resident of the State of Texas, a member of the PADI, PADI Dive Master, PADI Master Scuba Diver Trainer, PADI Advanced Open Water Diver Instructor, and was a person in charge of the subject voyage and the dives conducted thereon. Upon further information and belief, Defendant Phillips may be served with process at: 12630 Mitre Peak San Antonio, TX 78245-3478, or wherever he may be found.

2.09 As alleged more fully below, the subject offshore passenger voyage and dive excursion, and the incident giving rise to this action, occurred on navigable waters off the coast of the State of Texas, had a potentially disruptive impact on maritime commerce, and bear a substantial relationship to traditional maritime activity.

III. **FACTS**

3.01 On or about July 21, 2024, Plaintiffs were in Freeport, Texas, where they purchased a paid, multi-day “liveaboard” scuba diving excursion aboard the Vessel—a “Three Day Extended Flower Garden Tour”—from Defendant TCC (the “Voyage”). The Voyage constituted an offshore passenger voyage in navigable Gulf of Mexico waters. The Voyage departed from 726 W. Brazos Street in Freeport, Texas, at approximately 7:00 p.m. that same day carrying approximately eighteen (18) passengers and six (6) crewmembers, and was scheduled to return on or about July 24, 2024.

3.02 Onboard, Plaintiffs were briefed by Defendants – including the Vessel’s Master, Defendant Baranowski – regarding operations, dive plans, and safety procedures, including assurances that separated divers would be recovered through established protocols such as current tracking, diver recall, and deployment of the Vessel’s tender/dinghy, and that Defendants would maintain diver tracking and accountability throughout the Voyage.

3.03 During the Voyage, the Vessel transported the passengers (including Plaintiffs) from Freeport, Texas to various offshore locations in the Gulf of Mexico to conduct dive operations from the Vessel, including, without limitation, diver deployment, supervision, and recovery, including operations conducted at offshore dive sites, anchorages, and/or offshore mooring structures.

3.04 On July 24, 2024, the final day of the Voyage, the *M/V FLING* was operating approximately thirty (30) miles offshore of Port O’Connor, Texas, in the Gulf of Mexico. Weather and sea conditions began deteriorating, including overcast skies, rain showers, reduced visibility, and unfavorable surface and current conditions for diving operations. Despite these conditions, Defendants proceeded with the final dive of the trip and permitted passengers to enter the water.

3.05 At approximately 11:30 a.m., a group of approximately twelve (12) to fifteen (15) divers entered the water from the Vessel. Dive operations were conducted from the Vessel while positioned and/or moored at an offshore dive location, including through the use of mooring systems and hand-lines extending from the Vessel, which were intended to serve as pathways for divers to travel to and from the dive site and to facilitate safe return to the Vessel. During the dive, environmental conditions on the surface worsened, including increasing winds, rain, and reduced visibility, creating hazardous conditions for divers in the water.

3.06 While ascending with their group, a fellow diver was swept off the downline by strong current. Plaintiffs assisted her return, but were unable to reconnect to the line. Plaintiffs became separated, and were subsequently carried away by the current.

3.07 Upon resurfacing, Plaintiffs deployed the surface marker buoy and awaited recovery consistent with Defendants' prior representations and instructions. The Vessel's Master observed Plaintiffs in the water but failed to maintain continuous visual contact and abandoned his observation position, during which time Plaintiffs were not continuously monitored.

3.08 At the same time, the Vessel's crew, including the dive masters and instructors, failed to maintain a continuous and adequate lookout and diver accountability while assisting other divers back aboard the Vessel. As conditions further deteriorated, Plaintiffs were unable to safely return to the Vessel and continued to drift away from the dive site.

3.09 After Plaintiffs resurfaced and became separated from the Vessel, they were no longer engaged in active diving operations, but instead were adrift on the surface of the Gulf of Mexico and wholly dependent upon the Vessel, its master, and crew for detection, tracking, and recovery, and were effectively abandoned when Defendants failed to maintain contact and initiate timely recovery efforts. At that time, Defendants owed independent maritime duties to maintain lookout, track passengers, and promptly initiate and execute reasonable search, rescue, and recovery efforts.

3.10 Approximately 30 to 45 minutes passed before Defendants initiated any effort to locate or recover Plaintiffs. During this critical window, Defendants took no meaningful action to assist Plaintiffs, including failing to deploy tracking measures or launch the vessel's tender/dinghy, despite the known and foreseeable risk that Plaintiffs had become separated and were in peril.

3.11 At approximately 12:30 p.m., Plaintiffs were determined to be missing. The Vessel notified the United States Coast Guard, and search and rescue operations were initiated.

3.12 Plaintiffs were ultimately located by a United States Coast Guard helicopter approximately two (2) days later in the Gulf of Mexico and transported to a local hospital in Freeport, Texas, after enduring prolonged exposure to severe weather, ocean swells, dehydration, sun, and extreme physical and mental exhaustion while floating in open water without vessel support, supervision, or recovery assistance. Plaintiff Nathan Maker, a diabetic, was without necessary medication during this entire period, further compounding the risk of serious injury or death.

3.13 The United States Coast Guard subsequently conducted an investigation into the incident, and identified multiple causal contributing factors, including unfavorable weather conditions, failure of the Vessel's Master to cancel the dive, failure to maintain proper lookouts while divers were in the water, and failure to implement adequate emergency response procedures.

IV. CAUSES OF ACTION

A. General Maritime Negligence – Vessel Interests

4.01 Plaintiffs incorporate by reference the facts and allegations contained in the preceding paragraphs as if fully set forth herein.

4.02 At all relevant times, Defendants TCC, Fling, and Rinn, *in personam*, and the *M/V FLING*, her engines, tackle, equipment, and appurtenances, *in rem*, together with her officers, crew, agents, servants, and/or employees (collectively, the “Vessel Defendants”), owed Plaintiffs a duty to exercise reasonable care under the circumstances, including, but not limited to: the duty to provide reasonably safe conditions; to properly operate, navigate, and position the Vessel; to maintain a continuous and adequate lookout; to monitor environmental conditions; to implement

and enforce reasonable safety, tracking, and rescue protocols; and to properly supervise and control dive operations conducted from the Vessel, including diver accountability, tracking, and recovery. These duties included independent maritime obligations to detect, track, and recover passengers in the water, including following diver separation.

4.03 The Vessel Defendants breached these duties through acts and omissions occurring before, during, and after dive operations, including during diver separation and the subsequent failure to timely locate, track, and recover Plaintiffs, and throughout the ensuing search, rescue, and recovery efforts, including but not limited to the following:

- a. Failing to comply with applicable industry standards governing offshore dive operations, including accepted practices for diver supervision, accountability, and recovery;
- b. Failing to adequately monitor, assess, and respond to known and/or foreseeable hazardous weather, current, and sea conditions;
- c. Conducting and permitting dive operations in the presence of strong and dangerous wind, rain and currents that rendered safe ingress, egress, and diver recovery unreasonably dangerous;
- d. Failing to cancel, terminate, delay, suspend, or prevent dive operations (including diver entry into the water) due to presence of such known and/or foreseeable unsafe and unreasonably dangerous conditions;
- e. Failing to properly plan, organize, and evaluate the dive and voyage in light of known or foreseeable environmental and sea conditions;
- f. Failing to adequately warn Plaintiffs and other passengers of the dangerous weather, current, and sea conditions before directing or permitting them to enter the water;
- g. Failing to maintain a proper, continuous, and vigilant lookout for divers and passengers in the water, including Plaintiffs;
- h. Failing to properly track, monitor, and account for all divers and passengers in the water before, during, and after dive operations;
- i. Failing to properly supervise, coordinate, and control dive operations and associated passenger deployment and recovery operations from the Vessel;

- j. Failing to properly maintain, utilize, deploy, and/or manage mooring systems, downlines, and other safety equipment necessary for conducting safe diving operations from the Vessel, including line-throwing apparatus;
- k. Prematurely removing, mishandling, or utilizing inadequate dive equipment, including downlines, while divers were in the water;
- l. Failing to implement, utilize, follow, or enforce reasonable safety protocols, equipment, technology or procedures for diver tracking, locating, monitoring, and recovery;
- m. Failing to timely recognize that Plaintiffs were missing, separated from the Vessel, and in peril despite known and foreseeable risks of diver separation under the prevailing conditions;
- n. Failing to maintain visual contact with Plaintiffs after they became separated from the Vessel;
- o. Failing to exercise reasonable care to protect Plaintiffs while they were in the water and wholly dependent upon the Vessel for recovery;
- p. Failing to initiate immediate, timely, and reasonable search, rescue, and recovery efforts when Plaintiffs became separated from the Vessel;
- q. Failing to timely deploy available recovery resources, including the Vessel's tender/dinghy or other means of tracking and retrieving Plaintiffs;
- r. Failing to provide proper evaluation, supervision, and oversight of dive masters and instructors conducting dive operations;
- s. Failing to provide and/or ensure that dive masters and instructors were adequately trained in accordance with applicable standards of care, including those established by PADI for offshore open water dive operations;
- t. Failing to provide and/or ensure proper training of officers, crew, and dive personnel with respect to diver and passenger rescue, recovery, and emergency response procedures;
- u. Failing to fulfill non-delegable maritime duties to locate, track, and recover passengers in the water following separation from the Vessel; and/or
- v. Other acts so deemed negligent, particulars to be shown at trial of this cause.

B. General Maritime Negligence – Dive Masters/Instructors

4.04 Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

4.05 Defendants Baranowski, Windemiller, and Phillips (“Dive Master Defendants”) *in personam* were at all relevant times acting as dive masters, instructors, advisors and/or consultants aboard the *M/V FLING*.

4.06 In such capacity, the Dive Master Defendants were responsible for planning, training, supervising, coordinating, and conducting dive operations, including diver accountability, tracking, and emergency response and recovery procedures, including coordination with Vessel personnel for the detection, tracking, and recovery of divers and passengers in the water, and owed Plaintiffs a duty to exercise reasonable care under the circumstances, including but not limited to duties to:

- a. Properly train, instruct, and brief divers regarding dive conditions, risks, and procedures;
- b. Properly plan and evaluate dive conditions, including weather, current, and sea state;
- c. Monitor and assess changing environmental conditions before and during dive operations;
- d. Properly supervise divers entering, conducting, and exiting the dive;
- e. Maintain continuous diver accountability and tracking at all times, including during ascent and upon resurfacing;
- f. Coordinate with Vessel crew to ensure safe dive execution and the timely tracking and recovery of divers and passengers from the water;
- g. Ensure that appropriate safety measures, equipment, and procedures were in place and followed; and
- h. Recommend, require, or implement cancellation or termination of dive operations when conditions became unsafe.

4.07 The Dive Master Defendants breached these duties through acts and omissions including, but not limited to, the following:

- a. Failing to comply with applicable industry standards governing offshore dive operations, including accepted practices for diver supervision, accountability, and recovery;
- b. Failing to properly train, brief, and prepare Plaintiffs for the hazardous conditions encountered;
- c. Failing to adequately evaluate and respond to dangerous current, weather, and sea conditions;
- d. Permitting and facilitating dive operations under unsafe and deteriorating conditions;
- e. Failing to adequately supervise Plaintiffs during the dive;
- f. Failing to maintain proper diver accountability and tracking;
- g. Failing to ensure that adequate safety and recovery measures were in place;
- h. Failing to maintain or assist in maintaining a proper lookout for divers and passengers in the water;
- i. Failing to coordinate effectively with Vessel personnel regarding diver safety and recovery;
- j. Failing to take reasonable steps to prevent Plaintiffs from becoming separated from the Vessel under known and foreseeable conditions;
- k. Failing to timely recognize and respond to Plaintiffs' distress and peril following their separation from the Vessel;
- l. Failing to implement, coordinate, or assist in diver tracking, search, and recovery procedures following Plaintiffs' separation from the Vessel, including coordination with Vessel personnel;
- m. Failing to take reasonable steps to assist in or advocate for immediate search, rescue, and recovery efforts once Plaintiffs were known or should have been known to be missing; and/or
- n. Other acts so deemed negligent, particulars to be shown at trial of this cause.

4.08 Each of the foregoing acts of the Vessel and Dive Master Defendants, individually or collectively, constitute negligence, which proximately caused the resulting damages sustained

by Plaintiffs.

4.09 Such negligence was a direct and proximate cause of Plaintiffs' injuries and damages; the risk that divers would become separated from the Vessel and require prompt tracking and recovery under such conditions was known, foreseeable, and well-recognized in offshore diving operations.

4.10 Plaintiffs' injuries were not caused by any contributing fault of their own, but solely the incompetence, inattention, lack of care, disregard, and otherwise unreasonable conduct of the Vessel and Dive Master Defendants.

4.11 Plaintiffs' injuries and damages arose from a continuous sequence of negligent acts and omissions involving both dive operations and vessel operations, including diver deployment, supervision, tracking, separation, and subsequent search, rescue, and recovery failures. Plaintiffs plead these acts and omissions in the alternative and cumulatively and do not limit their claims to any single phase of operations.

C. Gross Negligence – Vessel and Dive Master Defendants

4.12 Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

4.13 At all relevant times, Defendants owed Plaintiffs a duty to exercise reasonable care under the circumstances and to refrain from conduct constituting gross negligence, willful misconduct, and/or reckless disregard for the safety of passengers.

4.14 Defendants' acts and omissions, as described herein, constituted gross negligence and/or recklessness under general maritime law in that, when viewed objectively from Defendants' standpoint at the time of the occurrence, they involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs, of which Defendants had actual,

subjective awareness, yet nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs.

4.15 Defendants had actual knowledge of dangerous and deteriorating weather, current, and sea conditions at the time of the subject dive, as well as prior conditions during the voyage demonstrating unsafe diving circumstances, yet consciously elected to proceed with dive operations despite such known and substantial risks.

4.16 Defendants further acted with conscious indifference by:

- a. Failing to suspend dive operations despite known hazardous conditions;
- b. Failing to maintain a continuous and vigilant lookout for divers and passengers in the water;
- c. Failing to maintain proper diver accountability under conditions presenting a high risk of separation;
- d. Failing to implement and follow basic safety, tracking, and emergency response protocols designed to protect divers; and
- e. Failing to implement, prepare for, or execute known and accepted lost-diver and emergency recovery procedures despite the high probability of diver separation under the prevailing conditions.

4.17 Defendants were aware, or should have been acutely aware, that divers—including Plaintiffs—were at substantial risk of separation from the Vessel due to prevailing conditions, yet failed to take reasonable measures to prevent such separation. Such conduct was not the result of inadvertence, but conscious decisions made in the face of known, extreme risk to passenger safety.

4.18 After Plaintiffs became separated from the Vessel, Defendants failed to maintain visual contact, failed to timely recognize the emergency, and failed to initiate immediate, timely, and reasonable search, rescue, and recovery efforts, including the prompt deployment of available recovery assets such as the Vessel's tender/dinghy, thereby leaving Plaintiffs adrift and abandoned in open ocean conditions.

4.19 Defendants further acted with conscious indifference by failing to take any meaningful action during a critical period following Plaintiffs' separation, despite knowing that Plaintiffs were in peril and wholly dependent upon the Vessel for recovery, thereby substantially increasing the likelihood of serious injury or death.

4.20 Defendants' conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs, and serious injury, death, and the damages complained of herein were the substantially likely result of such gross negligence and/or recklessness.

4.21 Plaintiffs seek all damages available under general maritime law for such conduct, including exemplary damages to the extent permitted.

V. **DAMAGES**

A. Actual Damages

5.01 As a direct and proximate result of the negligence and wrongful conduct of Defendants, as described herein, Plaintiffs sustained personal injuries and damages, including physical and emotional injuries for which they have sought and/or will seek medical treatment.

5.02 Plaintiffs were placed in a position of extreme peril and imminent risk of death and serious bodily harm while adrift in open waters of the Gulf of Mexico for approximately two (2) days without vessel support, supervision, or recovery assistance, and effectively abandoned at sea. During this time, Plaintiffs were exposed to severe environmental conditions, including prolonged sun exposure, heat, dehydration, exhaustion, and physical deterioration.

5.03 At all relevant times, Plaintiffs were wholly dependent upon the Vessel and its crew for their safety, tracking, and recovery in Gulf waters, and unable to independently return to shore or obtain assistance, thereby compounding severity of the peril created by Defendants' conduct.

5.04 As a result, Plaintiffs suffered physical injuries and symptoms, including but not limited to cuts/lacerations, extreme fatigue, dehydration, heat-related illness, sunburn, and other bodily harm, the full extent of which may continue to develop and is not yet fully known.

5.05 In addition to their physical injuries, Plaintiffs each experienced extreme mental anguish, fear, and emotional distress arising from the reasonable and well-founded belief that they would suffer serious injury or death. Plaintiffs were conscious of their peril and experienced prolonged fear, panic, and psychological trauma while attempting to survive in open Gulf waters.

5.06 Each Plaintiff also witnessed the other endure severe physical distress and deterioration, further compounding their emotional trauma.

5.07 As a result of the foregoing, Plaintiffs have suffered and continue to suffer severe emotional distress and mental anguish, which has manifested in physical and psychological symptoms, including but not limited to anxiety, fear, nightmares, sleep disturbance, post-traumatic stress, and loss of enjoyment of life.

5.08 Categorical actual damages which Plaintiffs seek to recover from Defendants include, but are not limited to, the following:

- a. Past and future physical pain and suffering;
- b. Past and future mental anguish and emotional distress;
- c. Past and future loss of enjoyment of life, including the diminished ability to engage in and enjoy the normal activities and pleasures of life;
- d. Past and future medical expenses;
- e. Past and future impairment;
- f. Past and future disfigurement and/or physical manifestations of injury;
- g. Past loss of earnings and future loss of earning capacity; and
- h. All other damages recoverable under the general maritime law.

B. Exemplary Damages

5.09 Because Defendants' conduct constitutes gross negligence and/or willful and reckless disregard for the safety of Plaintiffs, the imposition of punitive and/or exemplary damages is warranted under general maritime law. Defendants' course of conduct justifies—and warrants—the imposition of such damages to punish and deter such egregious misconduct in the future.

**VI.
INTEREST**

6.01 Plaintiffs seek pre-judgment and post-judgment interest as allowed by law.

**VII.
JURY DEMAND**

7.01 Plaintiffs request a trial by jury on all their claims, including those brought against the *in personam* Defendants, as well as those asserted against the *in rem* Defendant.

**VIII.
PRAYER**

WHEREFORE, Plaintiffs pray:

- (a) That process in due form of law according to the practice of this Honorable Court issue against the *in personam* Defendants summoning each to appear and answer, all and singular, the matters aforesaid;
- (b) That the Court recognize and maintain its *in rem* jurisdiction over the *M/V FLING*, and that all persons claiming any interest therein or in the substitute security posted in lieu of the Vessel be cited to appear and answer this matter;
- (c) That a judgment be entered in favor of Plaintiffs, Nathan Maker and Kimberly Maker, against Defendants, in an amount of each of their respective claims to be determined, with interest and costs; that Plaintiffs recover against the substitute security posted in place of the *M/V FLING* with respect to their *in rem* claims; and that Plaintiffs further recover against the *in personam* Defendants, jointly and severally, as permitted by law;
- (d) That upon final hearing, Plaintiffs have judgment against Defendants named herein, both jointly and severally;

- (e) That Plaintiffs have pre-judgment and post-judgment interest and all costs of Court;
- (f) That this Honorable Court grant Plaintiffs a Trial by Jury; and
- (g) That Plaintiffs may have such other and further relief as the Court and justice may deem just and appropriate under the circumstances of the cause.

Respectfully submitted,

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/s/ Douglas T. Gilman

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NATHAN MAKER AND KIMBERLY MAKER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

NATHAN MAKER and
KIMBERLY MAKER,
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M/V FLING, her engines, tackle, equipment,
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BOATS INC., FLING CHARTERS INC.,
MICHAEL BARANOWSKI, JOHN
WINDEMILLER, and TOMMY
PHILLIPS, *in personam*,
Defendants.

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C.A. NO. 3:26-CV-00118

[JURY]

VERIFICATION BY ATTORNEY, DOUGLAS T. GILMAN

I, Douglas T. Gilman, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

(1) I am over the age of eighteen (18) years of age, have never been convicted of a felony crime and am fully competent and able to make this Verification. I am an attorney at law admitted to practice before this Court and am a member of the State Bar of Texas.

(2) I am a Partner with Gilman & Allison, LLP and Attorney for Plaintiffs herein. I have read the foregoing Verified First Amended Complaint of Plaintiffs Nathan Maker and Kimberly Maker and am familiar with the contents thereof. The factual allegations contained therein are true and correct to the best of my knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

(3) The sources of my knowledge and belief include information provided to me by Plaintiffs and documents and records obtained in connection with the investigation of this matter.

**I HEREBY DECLARE AND VERIFY UNDER PENALTY OF PERJURY THAT
THE FOREGOING IS TRUE AND CORRECT.**

Executed in Pearland, Texas, this 13th day of May, 2026.



Douglas T. Gilman
Counsel for Plaintiffs